

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MARTIN MORENO,

Plaintiff/Petitioner,

v.

Civ. 14-997 JAP/GBW

Cr. 12-694 JAP

UNITED STATES OF AMERICA,

Defendant/Respondent.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION**

This matter comes before the Court on Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence. *Doc. 1*. Petitioner argues that he was afforded ineffective assistance of counsel because his attorney failed to (1) challenge the search warrant pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), (2) challenge the search warrant on specificity and time of execution grounds, and (3) file a timely notice of appeal. Petitioner's final argument is that he is currently being deprived of Jencks Act and *Brady*¹ materials.

The Magistrate Judge filed his Proposed Findings and Recommended Disposition (PFRD) on June 5, 2015. *Doc. 12*. He recommended rejecting Petitioner's claim that a *Franks* challenge should have been made because Petitioner presented no

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

evidence of any false statements made by the warrant's affiant, and thus failed to show either deficient performance or prejudice. *Doc. 12* at 7. The Magistrate Judge recommended rejecting Petitioner's second argument as lacking merit because the search warrant and application were sufficiently specific regarding the places to be searched and items to be seized, and the warrant properly authorized nighttime execution. *Id.* at 8-13. The Magistrate Judge recommended rejecting the third argument because Petitioner did not allege that he instructed counsel to file a notice of appeal and neither of the two predicates requiring consultation by counsel regarding an appeal was present. *Id.* at 12-14. Finally, the Magistrate Judge recommended rejecting Petitioner's assertion that he was currently being deprived of Jencks Act and *Brady* materials because such a claim is not cognizable under § 2255 and because Petitioner had been provided these documents in the past and was merely seeking another copy, which neither the Constitution nor any statute entitled him to. *Id.* at 15.

Petitioner's objections to the PFRD were due June 22, 2015. He has filed none. Furthermore, upon review of the record, I concur with the Magistrate Judge's findings and recommendations.

Wherefore, IT IS HEREBY ORDERED that the Magistrate Judge's Proposed Findings and Recommended Disposition, *doc. 12*, is ADOPTED and Petitioner's Motion to Vacate, Set Aside or Correct Sentence, *doc. 1*, is DENIED.

A handwritten signature in black ink, reading "James A. Parker". The signature is fluid and cursive, with a large loop at the end of the last name.

—
JAMES A. PARKER
SENIOR UNITED STATES DISTRICT JUDGE